



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)Nos.553 to 555 of 2010

WEB COPY

Palanichamy

... Appellant / Appellant / Plaintiff
in S.A.(MD)No.553 of 2010

Sakthivel

... Appellant / Appellant / Plaintiff
in S.A.(MD)No.554 of 2010

P.Thalaiyammal

... Appellant / Appellant / Plaintiff
in S.A.(MD)No.555 of 2010

-Vs-

1.Uthirappa Naickar

2.Rajaram

3.Pushbarani

4.Mahalakshmi

5.Saraswathi

6.Srividhya

... Respondents / Respondents /
in all S.As.

Defendants

Prayer in S.A.(MD)No.553 of 2010: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 25.08.2009 in A.S.No.34 of 2008 on the file of the Principal District Judge, Virudhunagar at Srivilliputtur confirming the judgment and decree dated 05.12.2007 in O.S.No.226 of 2003 on the file of the Sub Court, Sivakasi.

Prayer in S.A.(MD)No.554 of 2010: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 25.08.2009 in A.S.No.32 of 2008 on the file of the Principal District Judge, Virudhunagar at Srivilliputtur confirming the judgment and decree dated 05.12.2007 in O.S.No.54 of 2004 on the file of the Sub Court, Sivakasi.

Prayer in S.A.(MD)No.555 of 2010: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 25.08.2009 in A.S.No.35 of 2008 on the file of the Principal District Judge, Virudhunagar at Srivilliputtur confirming the judgment and decree dated 05.12.2007 in O.S.No.53 of 2004 on the file of the Sub Court, Sivakasi.

For Appellant
For R2 to R6
(in all S.A.)

: Mr.G.Gomathi Sankar
: Mr.K.Rajeshwaran
for Mr.K.Govi Ganesan



COMMON JUDGMENT

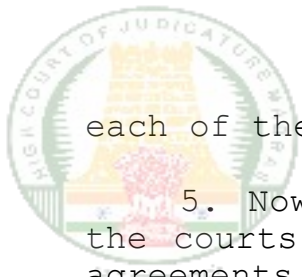
These three second appeals arise out of three suits for specific performance filed in O.S.No.226 of 2003, O.S.No.54 of 2004 & O.S.No.53 of 2004 on the file of the Sub Court, Sivakasi.

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2. The plaintiffs are the husband, wife and son. The defendants in all the suits are one and the same. Though the suit properties are different, the sale consideration set out in all the three agreements was only Rs.4,00,000/-. The respective plaintiffs had advanced a sum of Rs.3,50,000/- under the suit agreements. All the three agreements were executed by the first defendant Uthirappa Naickar in favour of the respective plaintiffs on 27.09.2002. The time for completing the sale transaction was fixed at two years. The plaintiff issued the notices on 11.12.2003 calling upon the first defendant to conclude the sale transaction. O.S.No.226 of 2003 came to be filed on 15.10.2003, while the other two suits were filed in June 2004. The first defendant is the father, while the other defendants happened to be his children. Written statement was filed controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The suits were tried separately. The respective plaintiffs examined themselves as P.W.1 and marked the sale agreement, lawyer notice and acknowledgment card as Ex.A1 to Ex.A3. Though the first defendant examined himself as witness, he did not appear for cross examination and therefore his testimony was rightly eschewed. After considering the evidence on record, by separate judgments dated 05.12.2007, while denying the relief of specific performance, the trial court directed the defendants to return the advance amount of Rs.3,50,000/- with interest at the rate of 8% per annum with effect from 28.09.2002. Aggrieved by the same, the appeals were filed before the Principal District Judge, Virudhunagar, Srivilliputtur. By the impugned judgment and decree dated 25.08.2009, the first appellate court dismissed A.S.Nos.32, 34 & 35 of 2008 filed by the respective plaintiffs and confirmed the decision of the trial court. Challenging the same, these second appeal have been filed. Though these second appeals were filed way back in the year 2010, they have not been admitted till date. During the pendency of the second appeals, the first respondent Uthirappa Naickar passed away. But there was no need or necessity to take steps because his legal heirs were already on record.

3. I carefully considered the rival contentions and went through the evidence on record.

4. It is true that the suit agreements are styled as sale agreements. But this will not disentitle the defendants to take the stand that the true nature of the transaction is not reflected in the suit agreements. According to the defendants, they had borrowed certain amounts from the respective plaintiffs and Ex.A1 marked in



each of the suits was executed for security purpose.

5. Now the only question that arises for consideration before the courts below was whether the suit agreements are actually sale agreements. The courts below, after considering the evidence on record, came to a finding that the suit agreements are not sale agreements. The reasons given for coming to such conclusion are as follows:-

(A) Though the properties covered under the respective sale agreements are different, the sale consideration was uniformly fixed at Rs.4,00,000/- in each of the sale agreements.

(B) Even though a sum of Rs.3,50,000/- was paid by the respective plaintiffs and the balance amount was only Rs.50,000/-, there was no need or necessity to fix a long period of two years as time for concluding the transaction. If really the suit properties were to be purchased, nothing stopped the plaintiffs from taking a sale deed then and there.

(C) The suit agreements were executed on 27.09.2002. The suits came to be filed on 15.10.2003 and June 2004. During this period, there was no issuance of notice from the respective plaintiffs. Notice came to be issued only on 11.12.2003 and even without waiting for reply, O.S.No.226 of 2003 came to be filed on 15.10.2003 itself.

6. The courts below have also come to a finding that since the defendants borrowed funds for their personal need, they had no option but to simply sign on the dotted lines. The courts below after consideration of the evidence on record, have arrived at a concurrent finding that the suit agreements are security documents and not meant to be sale agreements. The conclusion of the courts below cannot be said to be perverse. No substantial question of law arises for consideration. No interference is warranted because the courts below have also given a decree directing the defendants to return the advance amount taken under the respective agreements with interest at the rate of 8% per annum to be computed with effect from 27.09.2002. The judgment and decree passed by the courts below are not only sound but also eminently fair and equitable. The appellants shall have a charge on the suit properties for the decretal amounts in question. These second appeals are dismissed. No cost.

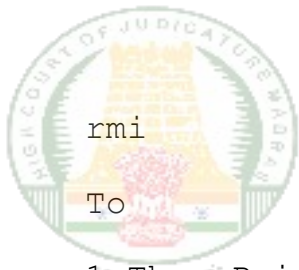
Sd/-

Assistant Registrar (Cs-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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To

1.The Principal District Judge, Virudhunagar.

2.The Sub Court, Sivakasi.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-10472[F] dated
07/03/2022)

+1 CC to M/s.K.GOVIGANESAN, Advocate (SR-10636[F] dated
08/03/2022)

S.A. (MD)Nos.553 to 555 of 2010
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KM(CO)

KB(07.04.2022) 4P 7C